



CITY OF SAN JOSE
 Planning, Building and Code Enforcement
 200 East Santa Clara Street
 San José, CA 95113-1905
 tel (408) 535-3555 fax (408) 292-6055
 Website: www.sanjoseca.gov/planning

NOTICE OF PERMIT APPEAL

TO BE COMPLETED BY PLANNING STAFF

HP19-008	RECEIPT # _____
St. James Park	AMOUNT _____
	DATE _____
	BY _____

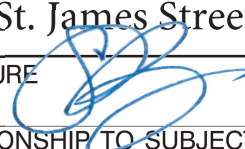
TO BE COMPLETED BY PERSON FILING APPEAL

PLEASE REFER TO PERMIT APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE. THIS FORM MUST BE ACCOMPANIED BY THE APPROPRIATE FILING FEE.

THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE PROPERTY WHICH IS LOCATED AT
 St. James Park

REASON(S) FOR APPEAL (See attached letters for primary bases of appeal):

PERSON FILING APPEAL

Sainte Claire Club	DAYTIME TELEPHONE (408)294-1242
65 E. St. James Street	San Jose CA 95112
SIGNATURE 	November 6, 2020
RELATIONSHIP TO SUBJECT SITE: Adjacent property owner	

**CONTACT PERSON
 (IF DIFFERENT FROM PERSON FILING APPEAL)**

Susan Brandt-Hawley, Brandt-Hawley Law Group		
P.O. Box 1659	Glen Ellen	CA 95442
DAYTIME TELEPHONE (707) 732-0007	FAX NUMBER none	susanbh@preservationlawyers.com

PROPERTY OWNER

Sainte Claire Club	November 6, 2020
65 E. St. James Street	San Jose CA 95112

Please submit this application IN PERSON to the Development Services Center, 1ST FLOOR, City Hall. Appointments are not required but may be accommodated by calling (408) 535-3555 or by visiting the Planning Division's website: <http://www.sanjoseca.gov/index.aspx?nid=3839>. For Assistance, call (408) 535-5680.

Brandt-Hawley Law Group

Chauvet House • PO Box 1659
Glen Ellen, California 95442
707.938.3900
preservationlawyers.com

October 26, 2020

Honorable Sam Liccardo, Mayor
and Members of the City Council
City of San José

via email city.clerk@sanjose.ca.gov

Subject: Public Hearing, October 27, 2020
File 20-1283, Item 7.2: Actions Related to the St. James Park Capital
Vision and Performing Arts Pavilion Project
Historic Preservation Permit

Dear Mayor Liccardo and Members of the City Council:

On behalf of the Sainte Claire Historic Preservation Foundation, I write to underscore the Foundation's longstanding, detailed objections (also described in my recent letter to Deputy Planning Director Robert Manford) to this Council's issuance of a historic preservation (HP) permit and related actions to further the St. James Park Capital Vision and Performing Arts Pavilion Project. As currently proposed, the inclusion of the oversized Pavilion with attendant overly-intense new events is illegally inconsistent with the city's codified Historic Preservation Ordinance. The city's approvals would also violate mandates of the California Environmental Quality Act.

While this project has been pending for years, its approval will have permanent impacts and necessarily awaits compliance with local and state law. City staff concedes significant environmental impacts to important historic resources and their environs. To comply with CEQA and Municipal Code Chapter 13.48.240, the Foundation respectfully requests that the Council *not approve the project as proposed* and commit to *feasible revisions to revitalize St. James Park in compliance with protective laws and policies*.

Significant Environmental Impacts

As you know, among the proposed findings before you are some that acknowledge significant environmental impacts relating to the new Pavilion uses that threaten the Park's historic integrity. In summary, quoting the findings verbatim:

Cultural Resources Impact CUL-1. "Implementation of the Project would impact the historic integrity of St. James Park and the St. James Park Historic District."
Finding after Mitigation: "[T]here are no feasible mitigation measures that would reduce the impact to a less than significant level. (**Significant Unavoidable**)"
Facts in Support of Finding: "[T]he Project would affect the historic significance of the site, change eligibility [to the National Register of Historic Places], remove character-defining features, and/or compromise integrity of the Project site and *the Project would have a significant impact on the historic integrity of the park and the district.*"

Noise Impact NOI-1. “Operation of the proposed performing arts pavilion portion of the Project would result in interior noise levels above the City’s residential interior noise standard of 45 dBA DNL.”

Finding after Mitigation: “... [T]he operation of the pavilion would still result in interior noise levels of 45 to 50 dBA within the residences along St. James Street. **(Significant Unavoidable Impact)**”

Facts in Support of Finding: “Project features will reduce noise impacts, such as large concerts (*define*)* ending by 8:00 PM, limits on sound system outputs, continuous noise monitoring during operations of certain sized (*specify size*)*¹ events, retrofitting the most sensitive noise receptors such as the Trinity Church ... However, ... it does not ensure that the Project would not result in a substantial increase in interior noise levels at the nearest noise-sensitive receptors ... [T]he proposed pavilion component of the overall Project would result in operational [significant] noise to the City’s residential interior noise standards, even with the limitation of usable hours.”

Aesthetic Impact AES-1: “Implementation of the Project would impact the visual character of the site”

Finding after Mitigation: “[T]he Project would change the visual character of the site and the buildings and, as designed, would be constructed in a manner that would impact the historic significance of the park and the St. James Historic District and ... impact the visual character of the site. **(Significant Unavoidable)**”

Facts in Support of Finding: “[A]bsent a redesign of the Project that would be fully consistent with the *Secretary of the Interior’s Standards for Rehabilitation*, the proposed mitigation measures would ... still result in a significant unavoidable impact.”

Recreation Impact REC-1: “The proposed changes to St. James Park would impact the visual character and historic integrity of the park and would result in an operational noise impact.”

Finding after Mitigation: “... [T]he Project would be a recreational facility that would result in adverse physical effects to the environment. **(Significant Unavoidable)**”

Facts in Support of Finding: “... [T]he overall physical changes to the park is [*sic*] connected with the significance in change in visual character of the Park. As the project was found to have significant unavoidable impacts to Cultural Resources, Aesthetics, and Noise ... the proposed recreational facility would also result in an adverse physical effect to the environment overall.”

Historic Preservation Permit

Municipal Code section 13.48.240 mandates that after considering the historic significance of the Park and appurtenant fixtures including *parking, site plan, landscaping, relationship of new construction to other park buildings, the street or public way, or other buildings or structures*, the Council has 2 choices:

¹ The findings as published in the final Council agenda on October 27 are inadequate as they leave “large concerts” and event “sizes” undefined.

- The Council *may issue* the HP permit if the work approved “will *not* be detrimental to an historic district *or to a structure or feature* of significant architectural, cultural, historical, aesthetic, or engineering interest or value *and* is consistent with the spirit and purposes of this chapter...”
- The Council *shall deny* the permit if the work approved “will be detrimental to an historic district *or to a structure or feature* of significant architectural, cultural, historical, aesthetic or engineering interest or value *or* is inconsistent with the purposes of this chapter, despite [imposed] conditions. The only exception is hardship proven under section 260 that is not relevant here.

The Council is aware that — as reflected in the project EIR and fairly conceded in its staff reports — construction and implementation of the project *could* damage existing historic elements and *would impact* the historic integrity of St. James Park and the St. James Park Historic District. The city concedes that the project is *not* in substantial conformance with the general character and surface treatment (including fenestration, materials, detailing, and color) of the *St. James Square Historic District Guidelines*. The project does not conform with the *Secretary of the Interior’s Standards for Rehabilitation* that the city applies to properties affecting valued historic resources. The non-conformance extends to proposed new structures and even the “overall design.”

Applying the plain meaning of the city’s Municipal Code Chapter 13.48.240, the Council’s discretion to approve this HP permit is limited. Because the project *would be* detrimental to *a structure or feature* of the Park, the Council must deny the permit. The project’s conceded significant impacts are *not* cured by a proposed finding of project consistency with the ordinance’s purposes: as explained above, an HP permit must be denied if it would result *either* in detrimental impact to a Park structure or feature *or* inconsistency with the purposes of the HP ordinance.

Failure to Comply with CEQA’s Mandates

Responses to Comments. The EIR is inadequate, as the Sainte Claire Historic Foundation and so many residents have expressed. Among other inadequacies pointed out in the record, a significant problem is its failure to respond to comments, including from nearby San José residents and members of local churches and facilities like the Sainte Claire Club that would be substantially affected by events in the historic Park.

The EIR failed to adequately respond to comments relating to parking, including but not limited to comment letters by Jacqueline Snell, James Dawson, Gordon McDonald, Victoria Baugh, Tiffany Crawford, and Jeff Rampe. The EIR’s general *non-*response was that CEQA does not require analysis of parking. However, recent case law does not so state and Section 13.48.240, quoted above, specifically *requires this Council to consider parking in the historic district*. EIR analysis must follow.

Other areas inadequately addressed in the EIR’s responses to comments include significant unmitigated noise impacts, the need for adequate toilet facilities, and the feasible relocation of the proposed Pavilion to Discovery Meadow to avoid its significant impacts to the historic Park and environs. Conceding that noise will exceed

codified standards and cause significant impacts due to the changed use of the site to include the intense uses of the proposed Pavilion does not excuse full analysis of noise impacts and mitigation in the EIR, as raised in the comments.

Adoption of Feasible Alternatives. From its inception, CEQA has protected the 'built' environment along with the natural environment. (Pub. Resources Code, § 21001, subd. (b) ["... it is the policy of the state to take all action necessary to provide the people of this state with ...enjoyment of aesthetic, natural, scenic, and historic environmental qualities ..."].) As the California Supreme Court emphasized in *Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 183-184, it is "the policy of the state to 'preserve ... examples of the major periods of California history.'" (Pub. Resources Code, § 21001, subd.(c).) Accordingly, the CEQA definition of "environment" includes "objects of historic or aesthetic significance." (Pub. Resources Code, § 21060.5.)

CEQA has substantive mandates. The Legislature has declared "the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects ..." (Pub. Resources Code, § 21002, see also §§ 21061.1, 21081.) The Supreme Court ruled in *Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 123 that "a public agency must also consider measures that might mitigate a project's adverse environmental impact, and *adopt them if feasible*" (id. at 123) due to "CEQA's substantive mandate that public agencies refrain from approving projects for which there are feasible alternatives ..."

Because the project as proposed would have significant environmental impacts, the Council thus cannot approve it if there are any feasible alternatives. The EIR provides a particularly appropriate alternative. The "Discovery Meadow Alternative Pavilion Location," meets "most" of the EIR's stated project objectives. The city's revised finding calling the Pavilion a "main" objective does not make it so; it is one of many EIR objectives proposed in combination to revitalize the Park. If the Pavilion is relocated to add to the city's performance venues, the Park would still be revitalized.

At the Director's hearing on the HP permit last week, city staff was asked by a citizen speaker what the process would be for relocating the Pavilion to Discovery Meadow to avoid significant impacts to the Park and environs. Staff's thoughtful response was essentially that it could seek additional public input in determining how to alter the project. That is what must happen now, both to comply with CEQA and meet the mandates of the city's Historic Preservation Ordinance.

Please do not approve the project as proposed.

Thank you for your consideration.

Sincerely,



Susan Brandt-Hawley

Brandt-Hawley Law Group

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707.938.3900
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October 20, 2020

Robert Manford, Deputy Planning Director
City of San José

via email planningsupportstaff@sanjose.ca.gov

Subject: Planning Director Hearing October 21, 2020
PP16-037 & HP19-008
Historic Preservation Permit for the St. James
Park Capital Vision and Levitt Pavilion Project

Dear Deputy Director Manford,

On behalf of the St. Claire Historic Preservation Foundation, I write to request denial of the historic preservation permit referenced above. As currently proposed, the St. James Park Capital Visions and Levitt Pavilion Project is not consistent with the Historic Preservation Ordinance. The project can and surely should be revised to revitalize St. James Park while complying with laws and policies enacted to protect it.

By way of introduction, since I have not previously appeared before you, my law practice focuses on public interest law and, in particular, on the protection and adaptive reuse of California's unique historic resources. Among the published environmental decisions litigated by this office on behalf of public-interest groups are *Sierra Club County of Fresno*, *Friends of the College of San Mateo Gardens v. San Mateo County Community College District*, *Friends of Sierra Madre v. City of Sierra Madre*, and *Berkeley Hillside Preservation v. City of Berkeley*, at the California Supreme Court, and *Lincoln Place Tenants Association v. City of Los Angeles*, *League for Protection v. City of Oakland*, *Stanislaus Natural Heritage Project v. County of Stanislaus*, *The Pocket Protectors v. City of Sacramento*, *Architectural Heritage Association v. County of Monterey*, *Preservation Action Council v. City of San José*, *Galante Vineyards v. Monterey Peninsula Water Management District*, and *Sierra Club v. County of Sonoma*, in the Courts of Appeal.

The city is aware that — as reflected in the project EIR and as fairly conceded in the city's staff reports — the project is *not* in substantial conformance with the general character and surface treatment (including fenestration, materials, detailing, and color) of the St. James Square Historic District Guidelines. The project is also *not* in substantial conformance with the *Secretary of the Interior's Standards for Rehabilitation*, which the city applies to properties affecting its valued historic resources. The non-conformance extends to proposed new structures and even the overall design. The city concedes that construction and implementation *could* damage existing historic elements and *would impact* the historic integrity of St. James Park and St. James Park Historic District.

A project in substantial compliance with the ordinance would not have such inconsistencies and substantial non-conformances as mentioned above. Since the city concedes, as it must, that the project construction may impact character-defining features and is inconsistent with the relevant guidelines and the *Secretary's Standards*, it is illogical to state that the project meets the purposes of the ordinance. The project should instead be revised to meet the standards of the city's protective ordinance and all other relevant guidelines, regulations, plans, and statutes.

Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Susan Brandt-Hawley', with a large, stylized flourish at the end.

Susan Brandt-Hawley